No. 79-5688

IN THE

Supreme Court of the United States

TRACY LEE HUDSON,

Petitioner,

vs.

THE STATE OF LOUISIANA,

Respondent

ON WRIT OF CERTIORARI OF THE SUPREME COURT OF THE STATE OF LOUISIANA

BRIEF OF RESPONDENT

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BRIEF OF RESPONDENT

STATEMENT OF THE CASE

In addition to the fact set forth in Petitioner's "Statement of the Case", Respondent deems it relevant to outline the evidence adduced at the first trial held in March, 1977, as follows:

A. The victim, Wendell Gale Craig, a white male, was taken to the Elm Trailer Court by a fellow employee, who was black, in order that the victim could pick up his vehicle;

B. The defendant, Tracy Lee Hudson, lived in the trailer court directly across the street from the trailer visited by the black man outside his neighbors trailer and ordered the black man from the park, hitting the black man and slamming the car door on his leg. This was viewed by two teenage girls who were residents of the trailer park;

C. The victim came out of the trailer in which he was visiting and informed the

defendant that the defendant had caused him to lose his ride. An argument insued between the victim and the defendant. The victim was seen retreating and the defendant was seen advancing upon the victim with his hand near his hip pocket. This was observed by the two teenaged girls who left the area at that time to call the police;

D. A lady in the mobile home in which the victim was visiting observed the encounter between the defendant and the victim through the window of her trailer, turned to call her husband to the window and when she returned her gaze out the window, observed the victim bleeding from the chest. The victim then walked into her trailer and died;

E. The coroner's report showed that the victim died of a stab wound to the chest;

F. When the defendant immediately returned to his trailer, extinquished all

lights, which had previously been on, and when the police arrived, feigned a deep sleep. Both the defendant and his wife lied to the police, changing their stories several times, first maintaining that neither of them ever went outside the trailer and, by stages, finally admitting that both the defendant and his wife were outside the trailer and that the defendant was, in fact, in the street separating the defendant's trailer from the trailer visited by the victim;

G. None of the witnesses saw any other persons in the area and certainly no one with any opportunity or motive to stab the victim;

H. The defendant's wife testified that she went outside the trailer, but was not involved in the argument;

I. Only a matter of a few seconds elapsed in between the time that the defen-

dant was seen advancing upon the victim, until the victim was observed to have suffered a stab wound.

ARGUMENT

The Trial Judge considered this evidence at the first trial insufficient to show guilt beyond a reasonable doubt, even though the jury found Tracy Hudson guilty. The Trial Judge granted a new trial under the provisions of L.S.A. Code of Criminal Procedure, Article 851, which is set out in Petitioner's brief. L.S.A. Code of Criminal Procedure, Article 857, provides that:

> "The effect of granting a new trial is to set aside the verdict or judgment and to permit retrial of the case with as little prejudice to either party as if it had never been tried." (Emphasis supplied)

Petitioner complains his retrial constitutes double jeopardy in violation of the

United States Constitution, Amendment V, and relies basically on Burks v. United States, and Jackson v. Virginia, both cited in his brief.

L.S.A. Code of Criminal Procedure, Article 591, provides that:

> "No person shall be twice put in jeopardy of life or liberty for the same offense, except, when on his own motion, a new trial has been granted or judgment has been arrested, or where there has been a mistrial legally ordered under the provisions of Article 775 or ordered with the expressed consent of the defendant."(Emphasis supplied)

To hold in the instant case that the Burks decision precludes a second trial of the defendant following the granting of his Motion for a New Trial would grant to the trial Judge, under the posture of the present law, power to substitute his opinion as to the guilt or innocence of an accused, and this power would be unbridled because no review could be had of that judge's decision.

In the instant case, it is clear from the record of the first trial, a synopsis of testimony being set forth above, that the trial judge erred in granting the defendant's motion for a new trial. However, no real review of this decision was possible under the posture of the law at this time.

The Louisiana Supreme Court, after reviewing this case on writs, considered Burks v. United States in rendering its opinion of June 25, 1979.

It should be noted that Justice Tate, in his concurring opinion, correctly stated the grounds for a new trial being granted herein, as that set out in La. C.Cr.P. 851 (5), when "the court is of the opinion that the ends of justice would be served by the granting of a new trial, although the defendant may not be entitled to a new trial as a matter of strict legal right."

As Justice Tate points out, the trial Judge had personal doubts as to the defendant's guilt, and he granted a new trial in the ends of justice. In effect, he second guessed the jury and required the State to try it again. The State had proven its case the first time, and the new trial was for the defendant's benefit, in "the ends of justice", rather than to give the State a second chance to attempt a conviction.

Obviously, there is evidence of the essential elements of the crime, and if the Jackson v. Virginia test is binding on the State of Louisiana, was there a finding by the trial Judge as a matter of law, that "There was a failure of proof at the trial level"? In this case, there was not a failure of proof, even as contemplated in the Jackson decision, that would warrant a finding of double jeopardy under the Burks rule,

if a new trial were ordered. The ruling of the Louisiana Supreme Court was therefore correct in permitting a retrial of Petitioner.

CONCLUSION

At the first trial, Petitioner was found guilty, by a jury of twelve, of First Degree Murder. The trial Judge granted a new trial in the ends of justice, a ruling which is not reviewable by a higher court. The trial Judge did not grant an acquittal, nor did he contemplate anything other than a new trial for the benefit of Tracy Lee Hudson, because the State had presented sufficient evidence for the jury as to the essential elements of the crime. This does not give the State an opportunity to muster more evidence, but gives the defendant, who has been convicted, another chance before a jury of his peers. Therefore, the second trial of Petitioner did not constitute double jeopardy, and his conviction should stand.

Respectfully submitted,

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